IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 16895 of 2005
To
SPECIAL CIVIL APPLICATION No. 16898 of 2005

For Approval and Signature:
HONOURABLE MR.JUSTICE D.A.MEHTA

HONOURABLE MS.JUSTICE H.N.DEVANI

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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VARUN FILAMENTS PVT LTD & 3 - Petitioner(s)
Versus
ADDITIONAL DIRECTOR GENERAL DIRECTORATE GENERAL OF EXCISE

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Appearance :
MR TS NANAVATI for Petitioner(s) : 1 - 4.
NOTICE SERVED BY DS for Respondent(s) : 1 - 2.
MR PJ MALKAN for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA
and
HONOURABLE MS.JUSTICE H.N.DEVANI
Date : 16/09/2005
ORAL JUDGMENT
(Per : HONOURABLE MR.JUSTICE D.A.MEHTA)

1. The dispute between the parties lies in a very narrow compass. On 16th December, 2004 four

applications seeking stay of demand came to be disposed of by the Customs, Excise and Service Tax Tribunal (CESTAT/Tribunal), West Regional Bench, Mumbai by recording as under:-

"2. After hearing both the sides, we find that the goods worth Rs.32.73 lakhs stands confiscated by the impugned order with the option to redeem the same on payment of a redemption fine of Rs.15 lakhs. Learned Advocate has undertaken not to redeem the goods during the pendency of the appeal.

3. In view of the above facts, we are of the view that sufficient surety to cover the penalty amounts in the shape of the goods is lying with the Revenue. Accordingly, we allow all the stay petitions. The appellants are at liberty to file early hearing application for the appeals."

2. Thereafter, the petitioners moved a Misc. Application termed as modification application and the following order came to be made by the CESTAT on 16.06.2005:

"1. Heard the modification application. The

waiver of predeposit of penalty & stay of recovery was granted on an undertaking recorded by the Ld. Advocate for the appellant that the redemption for the confiscated goods in the custody of the department will not be opted, pending the appeal.

2. The Advocate today fairly makes in this application made submits that the option of redemption had been caused without his knowledge & pleads for the modification of predeposit order.

3. Since the waiver was only on the undertaking that the goods were with the department & inters of Revenue was safe guarded which due to change in the position due to exercise of option to redeem having been exercised, it is therefore imperative to order safe guard Revenues interest. We would therefore order that full amounts of penalty as imposed should be deposited & compliance thereof reported on 16/8/2005. On such compliance not being effected the appeals herein will be liable to be dismissed for non compliance of section 35F of Central Excise Act, 1944. The earlier order is recalled & substituted by the order made today. Application disposed

above terms."

3. Heard Mr.T.S.Nanavati and Mr.Malkan appearing on behalf of the petitioners and the respondent respectively.

4. RULE. With the consent of the learned counsel, the petitions are taken up for final hearing and disposal today. Mr.Malkan waives service of rule.

5. As can be seen from the impugned order of Tribunal dated 16th June, 2005, the CESTAT records that the order of waiving pre-deposit was only on the undertaking that the goods were lying with the department and interest of Revenue was safeguarded. Now in light of changed circumstances, CESTAT, on the ground that it is imperative to order safeguarding of Revenue's interest, directs payment of full amounts of penalty as pre-deposit. When this order is compared with the earlier order dated 16th

December, 2004 it can be seen that in the earlier order there was no discussion on merits: whether the petitioners had a prima facie case or not, and whether the petitioners were undergoing any hardship. Even the second order i.e. impugned order dated 16th June, 2005 does not reflect any application of mind on behalf of CESTAT in this direction. May be, after taking into consideration the case put up by the petitioners, CESTAT might arrive at the same conclusion. However, the order must reflect application of mind. The impugned order dated 16th June, 2005 does not reflect as to whether the Tribunal was aware of the controversy before it, what were the factors pro and contra the case of the petitioners and what were the findings in relation to the same. Whether the petitioners had any prima facie case and, were likely to face any hardship on order of pre-deposit are issues which have to be addressed and adjudicated. In these circumstances, the impugned order dated 16th June, 2005 cannot be

allowed to stand.

6. The order dated 16th June, 2005 made by CESTAT in application No.E/MA/(MODF)/1183 to 1186/2005 is hereby quashed and set aside. The applications are, accordingly, restored to the file of CESTAT to arrive at an appropriate decision in accordance with law after giving a reasonable opportunity of hearing to both the sides.

7. The petitioners are directed to appear before CESTAT on 30th September, 2005 in the first instance, and thereupon CESTAT shall fix up a date of hearing subject to its convenience.

8. The petitions are, accordingly, allowed. Rule is made absolute. There shall be no order as to costs. Direct service permitted.

9. Registry to place a copy of this order in all connected matters.

[D.A. MEHTA, J]

[H.N. DEVANI, J]

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*Bhavesh**